privity with C or by purchase without such privity. For estoppel by deed affects privies of the grantor. *Bank of Utica* v. *Mersereau*, 3 Barb. Ch. (N. Y.) 528. But it does not affect those not claiming under the grantor. *Kitzmiller* v. *Van Rensselaer*, 10 Oh. St. 63. Heirs are generally in privity with the ancestor. *Bank of Utica* v. *Mersereau*, *supra*. But heirs are not in privity with the ancestor if they acquire title otherwise than by descent from him. *Russ* v. *Alpaugh*, 118 Mass. 369. And a contingent remainder may pass to the heirs of the remainderman, or even to his devisee under the common statutes concerning wills. *Loring* v. *Arnold*, 15 R. I. 428. Here, however, the court held that the heirs of C took their claim directly under the original will, and not by descent from C, because title never vested in C. *Cf. Hall* v. *Nute*, 38 N. H. 422; *Schmidt* v. *Jewett*, 127 N. Y. App. Div. 376.

WITNESSES — COMPETENCY IN GENERAL — TESTIMONY AS TO PERSONAL TRANSACTION WITH DECEDENT. — A New York statute provides that in an action against an executor a party may not be examined as a witness in his own behalf concerning a personal transaction or communication between the witness and the deceased. A sued B's executors on a note alleged to have been executed by B. A, as witness in his own behalf, was asked, "Have you seen B write his name so as to familiarize yourself with his signature?" *Held*, that he is incompetent to answer. *Wilber* v. *Gillespie*, 127 N. Y. App. Div. 604.

New York courts have been very liberal in construing the words "personal transaction" in this statute. Thus, it has been held that a beneficiary who is contesting a will cannot testify to irrational acts of the testator in his presence. *Holland* v. *Holland*, 98 N. Y. App. Div. 366. Nor can he testify to a conversation between the testator and a third party at the time the will was executed. *Matter of Bernsee*, 141 N. Y. 389. Such testimony is admissible under similar statutes in other jurisdictions. *Erusha* v. *Tomash*, 98 Iowa 510; *Wollman* v. *Ruehle*, 104 Wis. 603. And even the New York courts realized that the rule has been stretched to its extreme, but they defend their decisions as being in furtherance of justice. See *Matter of Will of Dunham*, 121 N. Y. 575. The present decision involves holding that merely seeing a man write his name, in whatever circumstances, is a personal transaction. Even in view of previous holdings, none of which have gone so far, it seems doubtful whether such an absolute departure from the clear meaning of the words is justifiable.

WITNESSES — EXPERTS — COMPENSATION EXCEEDING REGULAR FEE. — The defendant appealed from a conviction of forgery, assigning as error that the court below had sustained a physician, a witness for the defendant, in his refusal to answer a hypothetical question as to the effects of a disease under certain conditions, unless he should receive compensation in excess of the regular witness fee for such expert testimony. *Held*, that the court erred in sustaining the physician's refusal to answer the hypothetical question. *State* v. *Bell*, 111 S. W. 24 (Mo., Sup. Ct.).

For testimony involving preparation, with a view to pronouncing a deliberate opinion upon particular circumstances of the case, an expert may demand extra compensation. *People* v. *Montgomery*, 13 Abb. Pr. N. S. (N. Y.) 207. Whether the same privilege should extend to experts called upon simply for impromptu answers to general and hypothetical questions, the cases are not agreed. Recent decisions and the weight of authority, however, are opposed to such an extension. *Main* v. *Sherman Co.*, 74 Neb. 155. *Contra*, *United States* v. *Howe*, 26 Fed. 394. The minority view, which declines to discriminate between the two kinds of expert testimony, although finding no support in recent common law decisions, has in a few states been perpetuated by statute. *Farmer* v. *Stillwater Water Co.*, 86 Minn. 59. But such a statute does not apply to a witness to whom the facts are already known, merely because he possesses professional skill which may enable him to observe and recount those facts more intelligently. *Anderson* v. *M., St. P. & S. Ste. Marie Ry. Co.*, 103 Minn. 184. Where, then, experts must give impromptu answers without additional witness fee, a promise to pay such additional fee is unenforceable for lack of consideration. *Burnett* v. *Freeman*, 125 Mo. App. 683. And in the absence of such a